

08-CV-00920-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISABEL VALENCIA-PEREZ,

Plaintiff,

v.

DARYL SCHERMERHORN, in his
individual capacity and "JANE DOE"
SCHERMERHORN, as a marital
community; STEVEN MALPEZZI, in his
individual capacity and "JANE DOE"
MALPEZZI, as a marital community,

Defendants.

NO.

COMPLAINT FOR DAMAGES

JURY TRIAL DEMAND

INTRODUCTION

Plaintiff Isabel Valencia-Perez files this lawsuit against Defendants Schermerhorn and Malpezzi alleging violations of his civil rights and to request relief pursuant to the Constitution of the United States. As alleged with greater detail below, the Plaintiff claims that Daryl Schermerhorn and Steven Malpezzi, employees and agents of the United States Department of Homeland Security, Customs and Border Protection, unreasonably detained the plaintiff without any reasonable suspicion of criminal activity, seized the plaintiff without probable cause and through the use of excessive force.

COMPLAINT FOR DAMAGES

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I. PARTIES, JURISDICTION AND VENUE

1.1 At all times relevant hereto the Plaintiff, ISABEL VALENCIA-PEREZ, was a citizen of Mexico, residing in Mount Vernon, Skagit County, State of Washington.

1.2 At all times relevant hereto the Defendants, DARYL SCHERMERHORN and "JANE DOE" SCHERMERHORN, were husband and wife residing in Whatcom County, State of Washington, constituting a marital community under the laws of the State of Washington and all acts and omissions alleged herein were performed on behalf of and for the benefit of the marital community.

1.3 At all times relevant hereto the Defendants, STEVEN MALPEZZI and "JANE DOE" MALPEZZI, were husband and wife residing in Whatcom County, State of Washington, constituting a marital community under the laws of the State of Washington and all acts and omissions alleged herein were performed on behalf of and for the benefit of the marital community.

1.4 This is a civil action being brought pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), with jurisdiction in this court pursuant to 28 U.S.C. §1331 and § 2201.

1.5 Venue is proper in the Western District of Washington under 28 U.S.C. §1391(b) because the events giving rise to these claims occurred in this judicial district.

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II. STATUS OF DEFENDANTS

2.1 Defendants, DARYL SCHERMERHORN and STEVEN MALPEZZI, are now and at all times material, were, duly appointed, employed, and acting as law enforcement officials of the United States Department of Homeland Security, Customs and Border Protection.

2.2 Each of the acts of the Defendants was allegedly done by Defendants DARYL SCHERMERHORN and STEVEN MALPEZZI in their individual capacities,

1 while under the color and pretense of the statutes, regulations, customs, and usages of the
2 United States of America, and under the authority of their office as law enforcement
3 officials for the United States Department of Homeland Security, Customs and Border
4 Protection.

5 III. FACTS

6 3.1 On June 12, 2006, at or about 11:15 a.m., the Plaintiff, Isabel Valencia-
7 Perez, was sitting within a grassy area outside of his apartment complex in the 1300
8 block of North 26th Street in the City of Mount Vernon, Skagit County, State of
9 Washington, while waiting for a school bus to deliver his six year son, Luis, home from
10 kindergarten.

11 3.2 At the time of this incident on June 12, 2006, Defendants Daryl
12 Schermerhorn and Steven Malpezzi were United States Border Patrol Agents who upon
13 information and belief were stationed at the Canada/United States Border in Lynden,
14 Whatcom County, State of Washington.

15 3.3 During a frolic in the City of Mount Vernon Defendants Daryl
16 Schermerhorn and Steven Malpezzi observed Mr. Valencia-Perez, who is of Hispanic
17 decent, sitting within the grass planting strip area in the 1300 block of North 26th Street in
18 the City of Mount Vernon.

19 3.4 Without any reasonable suspicion that any criminal activity having
20 occurred or then occurring, Defendants Daryl Schermerhorn and Steven Malpezzi, who
21 were operating a car with dark tinted windows, and without any official markings or
22 designation as a Border Patrol Vehicle, and while dressed in plain clothes with no visible
23 indication of their official position as law enforcement agents, the defendants initiated
24 physical contact with Mr. Valencia-Perez based solely because of his appearance as a
25 Hispanic.
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1 3.5 The Plaintiff observed the defendants' unmarked car pull into the
2 apartment parking lot directly behind his position, about 20 feet from him and a large
3 man, believed to be Defendant Daryl Schermerhorn, exit the passenger side of the car and
4 quickly moved towards Mr.Valencia-Perez. No one else was around Mr.Valencia-Perez
5 at the time.

6 3.6 Defendant Schermerhorn quickly approached Mr.Valencia-Perez, who
7 then stood up fearing for his safety. Defendant Schermerhorn reached out and grabbed
8 Mr.Valencia-Perez, placing him into a choke hold.

9 3.7 Mr.Valencia-Perez attempted to free himself from the choke hold, when
10 Defendant Schermerhorn punched Mr.Valencia-Perez in the face with a fist, near his left
11 eye. Mr.Valencia-Perez fell to the ground with Defendant Schermerhorn then jumping
12 on top of him.

13 3.8 Defendant Schermerhorn continued to strike Mr.Valencia-Perez about his
14 neck and back area. Mr.Valencia-Perez attempted to pull his jacket over his head to
15 protect himself as Defendant Schermerhorn kept hitting him.

16 3.9 Another large man with black hair, believed to be Defendant Steven
17 Malpezzi, also got on top of Mr.Valencia-Perez, and pointed a handgun at Mr.Valencia-
18 Perez' head. Defendant Malpezzi was dressed in a polo shirt with blue pants.

19 3.10 Defendant Malpezzi yelled at Mr.Valencia-Perez that he was an
20 immigration agent while on top of Mr.Valencia-Perez.

21 3.11 Defendants Schermerhorn and Malpezzi then placed their knees into
22 Mr.Valencia-Perez' back while attempting to use shackles to restrain him.

23 3.12 while the defendants were assaulting Mr.Valencia-Perez, officers from the
24 Mount Vernon Police Department, who were responding to a 911 emergency call, arrived
25 and ordered Defendants Schermerhorn and Malpezzi to cease their actions against
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1 Mr.Valencia-Perez. The police officers then transported Mr.Valencia-Perez and the
2 agents to the Mount Vernon Police Department in order to commence an investigation
3 into the defendants actions.

4 3.13 Although more than 25 percent of the population of Mount Vernon,
5 Washington, were identified as Hispanic according to the year 2000 United States
6 Census, Defendants Daryl Schermerhorn and Steven Malpezzi seized Mr.Valencia-Perez
7 without probable cause and through the use of excessive force.

8 3.14 Mr.Valencia-Perez sustained serious bodily injury and damages from the
9 Defendants Schermerhorn and Malpezzis' excessive force committed during the
10 unreasonable search and seizure of Mr.Valencia-Perez.

11 IV. FIRST CAUSE OF ACTION

12 4.1 Plaintiff incorporates herein by this reference paragraphs 1.1 through 3.14
13 above.

14 4.2 Defendants Daryl Schermerhorn and Steven Malpezzi unreasonably seized
15 and arrested the Plaintiff without probable cause or reasonable suspicion of criminal
16 activity, thereby violating his rights guaranteed under the Fourth Amendment to the
17 United States.

18 4.3 As a direct and proximate result of the above-described acts of the
19 Defendants, all committed under color of lawful authority as federal agents, the Plaintiff
20 suffered harm and damages, all of which is in violation of his rights guaranteed under the
21 Fourth Amendment to the United States.

22 V. SECOND CAUSE OF ACTION

23 5.1 Plaintiff incorporates herein by this reference paragraphs 1.1 through 4.3
24 above.

1 5.2 Defendants Daryl Schermerhorn and Steven Malpezzi violated the
2 Plaintiff's right to be free from unreasonable search and seizure wherein the defendants
3 through the use of excessive force caused the Plaintiff bodily injury necessitating medical
4 care and treatment for the same, which actions by the defendants violate rights under the
5 Fourth Amendment to the United States.

6 5.3 As a direct and proximate result of the above-described acts of the
7 Defendants, all committed under color of lawful authority as federal agents, the Plaintiff
8 suffered harm and damages, all of which is in violation of his rights under the Fourth
9 Amendment to the United States.

10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each
12 of them, as follows:

13 1. An award of special and general damages to Plaintiff against Defendants
14 Schermerhorn and Malpezzi in an amount to be awarded by the trier of fact.

15 2. An award of punitive damages to Plaintiff against Defendants
16 Schermerhorn and Malpezzi.

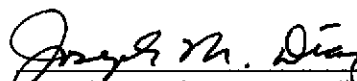
17 3. Awarding Plaintiff his costs and expenses pursuant to all applicable
18 statutory authority including but not limited to 28 U.S.C. § 1921.

19 4. The Plaintiff demands a jury trial.

20 5. Such other and further relief as the court may deem just and equitable.

21 DATED this 11th day, of June, 2008.

22 DAVIES PEARSON, P.C.

23 
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25 Of Attorneys for Plaintiff
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